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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,833	10/20/2003	Andrew T. Hecht	874.1001US	6197
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Davidson, Davidson & Kappel, LLC			EXAMINER	
485 7th Avenue			BAIRD, EDWARD J	
14th Floor				
New York, NY 10018			ART UNIT	PAPER NUMBER
			3693	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/689,833

**Applicant(s)**

HECHT, ANDREW T.

**Examiner**

EDWARD BAIRD

**Art Unit**

3693

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 17, 23, 33 and 74-95 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17, 23, 33 and 74-95 is/are rejected.
- 7) ☒ Claim(s) 33 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/08)  
Paper No(s)/Mail Date 15 October 2007.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Applicant's election of Group III, claims 17, 23, 33, without traverse in the reply filed on 17 December 2007 is acknowledged. Claims 1-16, 18-22, 24-32, 34-73 have been withdrawn and therefore canceled. Applicant has added dependent claims 74-95. Claims 17, 23, 33, and 74-95 have been rejected under 35 U.S.C. 112, 101, and 103(a).

### ***Specification***

2. Applicant cooperation is requested in correcting any error of which applicant may become aware in the specification.

### ***Claim Objections***

3. Claim 33 is objected to because of the following informalities: The word "a" is does not belong in the limitation: "b. generating a an initial volatility value". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 78 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. **Claim 78** recites the limitations "The method of claim 17, wherein the real estate transactions include **residential** real estate transactions". Claim 17 refers to **commercial** real

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estate transactions and **commercial** real estate transaction values. Thus claim 78 is redefining the term "**commercial** real estate transactions", not further limiting it.

For purposes of examination, the claim will be interpreted as not further limiting.

Appropriate correction is required.

***Claim Rejections - 35 USC § 101***

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 17, 23, 33, and 74-95 are rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter.

9. Regarding **claim 17**: the claim states: "A method for providing a daily cash index. . ." and "generating a volatility value".

The claimed invention defines a process which is one of the four statutory classes. However, the claimed invention is directed towards **generating a value** which is a judicial exception to 35 U.S.C. 101 (i.e. an abstract idea, natural phenomenon, or law of nature). The claimed invention could be statutory if directed towards a practical application of such judicial exception. However, the claimed invention is not directed to a practical application of such judicial exception in that the claimed invention does not require any physical transformation and does not produce a useful, concrete, and tangible result. (See MPEP 2106).

To overcome these rejections, Examiner recommends claiming the agreement parts of the claims in positive method steps.

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10. Regarding **claim 23**: the claim states: "performing a survey. . ." and "generating a daily cash index" are examples of judicial exceptions to 35 U.S.C. 101 as discussed above.
11. Regarding **claim 33**: the claim states: "generating monthly cash indices, generating a an [sic] initial volatility value, performing a survey, generating a daily cash index, aggregating the daily surveys, and updating the volatility value. . ." are examples of judicial exceptions to 35 U.S.C. 101 as discussed above.
12. **Claims 74-95** are rejected as being dependent on either claims 17, 23, or 33.

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

14. Claims 17, 23, 33, 78-81, 86, 91, 92, and 95 are rejected under 35 U.S.C. 103 (a) as being unpatentable over **Florance, et al** (USPub. No. 2002/0065739) as supplied by Applicant, in view of **Kevenides** ("International real estate investment risky analysis", Real Estate Issues, Chicago: Fall 2002. Vol. 27, Iss. 3/4; pg. 61, 13 pgs).
15. Regarding **claims 17 and 23**, **Florance** teaches
  - a. each day, performing a survey of actual commercial real estate / real estate transactions executed on said day in a local region [see paragraph 0038, 0054];
  - b. each day, generating a daily cash index of commercial real estate / real estate transaction values in the local region based upon the survey [see paragraph 0052 - clients

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receive daily service updates; paragraph 0105. Examiner interprets *creation of indexes* as similar to Applicant's **generating a daily cash index**;

c. each month, aggregating the daily surveys on a monthly basis to generate a monthly cash index [see paragraph 0054. Examiner interprets *continuously assembled and updated* as equivalent to Applicant's **aggregating the daily surveys**];

d. generating a **volatility value** based upon the monthly cash indices over a plurality of years.

**Florance** does not specifically disclose a **volatility factor** as such. However, **Kevenides** discloses challenges of international real estate investment involving country funds [page 2, last three paragraphs]. **Kevenides** further discloses *Value at Risk* (VAR) which is the amount of money an institution could make or lose from changes in the price of the underlying assets; VAR is a statistical estimate based on historical data [page 2, last paragraph]. Examiner interprets *Value at Risk* (VAR) as Applicant's **volatility value**. Examiner interprets *historical data* as Applicant's **indices over a plurality of years**.

Therefore, it would have been obvious to a person having an ordinary skill in the art at the time of the **Florance's** invention to include *Value at Risk* (VAR) as disclosed by **Kevenides** because an individual or institution investing real estate can use VAR as a measure of potential losses rather than measure of potential gains [page 2, last paragraph].

16. Regarding claim 33, **Florance** and **Kevenides** teach the limitations c, d, e, and f as discussed in the rejection of claim 17 above, in that the limitations c, d, e, and f of this claim are essentially the limitations a, b, c, and d of claim 17. In addition, **Florance** teaches:

a. based upon historical data, generating monthly cash indices of real estate values in a **local region** [see paragraph 0078 - geographic region]; for each month of at least 10 prior years

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[see paragraph 0257 - analyze transactions over a long period of time (e.g., ten years) to provide valuable historical performance data].

b. generating a an [sic] initial volatility value based upon the monthly cash indices over said at least **10 prior years** [see paragraph 0257];

17. **Claim 78** is substantially similar to claim 17, the claim upon which it depends in that the limitations are not further limiting based on the claim rejection under 35 U.S.C. 112, 2<sup>nd</sup> paragraph.

18. Regarding **claims 79 and 80**, the limitations:

- the daily cash index is aggregated on a monthly basis to provide a monthly index value, and
- generating a volatility value of the daily cash index, said volatility value being a function of a historic performance of the daily cash index

further limit claim 23, which is broader than claim 17. However, these limitations are substantially similar to limitations c and d, respectively, of claim 17 as were discussed in the rejection of claim 17 above.

19. Regarding **claim 81**, the limitation:

- the historic performance is a function of aggregated monthly values of the daily cash index over a **plurality of years**.

is disclosed by **Florance** as discussed in the rejection of claim 33.

20. Regarding **claims 86 and 91**, **Florance** teaches the limitations

- the real estate transactions include **residential** real estate transactions [see paragraph 0088 - data gathering and dissemination to both **residential** and commercial real estate], and

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- the real estate transactions include **residential** real estate transactions and the real estate values include **residential** real estate values [see paragraph 0088].

21. Regarding **claim 92**, the limitations:

- periodically aggregating the daily surveys to generate a periodic cash index;
- generating a volatility value based upon the periodic cash indices over a plurality of years.

further limit claim 23 so as to render this claim substantially similar to independent claim 17.

Therefore, this claim is rejected for the same reasons as claim 17.

22. Regarding **claim 95, Florance** teaches:

- the daily cash index is calculated as a price per square foot [see paragraph 0133 and 0134 - Examiner notes that *stored data representing square footage* is indicative of Applicant's **daily cash index calculated as a price per square foot**; see paragraph 0106].

23. Claims 74, 75, 77, 82, 83, 85, 87, 88, 90, 93, and 94 are rejected under 35 U.S.C. 103

(a) as being unpatentable over **Florance, et al** (USPub. No. 2002/0065739) in view of

**Kevenides** ("International real estate investment risky analysis", Real Estate Issues, Chicago: Fall 2002. Vol. 27, Iss. 3/4; pg. 61, 13 pgs) as applied to claims 17, 23 and 33 above, and further in view of **Official Notice**.

24. Regarding **claims 74, 75, 82, 83, 87, and 88** the limitations that the daily cash index is calculated on

- a weighted average basis, or
- a moving average basis



are standard numerical techniques used in the financial industry. Examiner takes **Official Notice** that these numerical techniques are old and well known.

Therefore, it would have been obvious to a person having an ordinary skill in the art at the time of the **Florance's** invention to include *a weighted average basis* or *a moving average basis* for calculating the daily cash index because these are standard numerical techniques used in the financial industry.

25. Regarding **claims 77, 85, and 90**, the limitations that the daily cash index is weighted according to building classes (i.e. Class A buildings, Class B buildings, and Class C buildings) are old and well known in the real estate industry. Examiner takes **Official Notice** that buildings are classified as Class A, Class B, or Class C buildings due to their desirability (i.e. ability to attract higher quality tenants) in commercial real estate.

Therefore, it would have been obvious to a person having an ordinary skill in the art at the time of the **Florance's** invention to include *building classes* for calculating the daily cash index because the volatility value would be a strong function of the ability to find and keep higher quality commercial tenants.

26. **Claim 93 and 94** are substantially similar to claim 92 excepting that a volatility factor is being generated based on weekly and biweekly cash indices. Examiner takes **Official Notice** that generating "factors" based on a **weekly** or **biweekly** data as opposed to "**periodic**" or **monthly** data is often applied in basic business methods. An example of this is paying of a company's employees. Some companies pay employees weekly, some biweekly, some monthly. One of ordinary skill in the art at the time of **Florance's** disclosure would be aware of such business practices.

Therefore, it would have been obvious to a person having an ordinary skill in the art at the time of the **Florance's** invention to include generating "factors" based on a **weekly** or

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**biweekly** data because a user would be able to generate a volatility factor if market conditions change more quickly.

27. Claims 76, 84, and 89 are rejected under 35 U.S.C. 103 (a) as being unpatentable over **Florance, et al** (USPub. No. 2002/0065739) in view of **Kevenides** ("International real estate investment risky analysis", Real Estate Issues, Chicago: Fall 2002. Vol. 27, Iss. 3/4; pg. 61, 13 pgs) as applied to claims 17, 23 and 33 above, and further in view of **Hoadley** ("Options Strategy Analysis Tools", website "[www.hoadley.net/options/BS.htm](http://www.hoadley.net/options/BS.htm)". December 18, 2002).

28. Regarding **claims 76, 84, and 89**, the limitation that the daily cash index is calculated on an exponential moving average basis is not disclosed by either **Florance** or **Kevenides**.

However, **Hoadley** discloses determining volatility of option prices using an **exponentially weighted historical volatility** estimation using the EWMA (exponentially weighted moving average) model [page 2, bottom – page 3, top]. Examiner interprets *exponentially weighted moving average* Applicant's **exponential moving average**.

Therefore, it would have been obvious to a person having an ordinary skill in the art at the time of the **Florance's** invention to include *exponentially weighted moving average* as disclosed by **Hoadley** to calculate the daily cash index because the *exponentially weighted moving average* model gives greater emphasis to more recent prices [page 3, top].

#### ***Cited Prior Art***

29. The prior art of record and not relied upon is considered pertinent to Applicant's disclosure.

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- Hugh Skipper, et al: "Plans for the Development of a Monthly Index of Services", Office of National Statistics (UK), "Economic Trends", No. 551, 1999.
- NASD Notice to Members 00-43: Informational: Weighted Average And Special Pricing Formula Trades", Effective Date: July 17, 2000.

### ***Conclusion***

30. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ed Baird whose telephone number is (571) 270-3330. The examiner can normally be reached on Monday - Thursday 7:30 am - 5:00 pm Eastern Time.

31. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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